

EXECUTIVE

Docket No. 01-00854

1. Citizens admits paragraphs 1-3 of Universal's Complaint.

2. In response to paragraph 4, Citizens states that its full name is Citizens Telecommunications Company of the Volunteer State, LLC and any correspondence regarding this matter should be directed to:

J. Michael Swatts
Director, State Government Affairs
300 Bland Street
P. O. Box 770
Bluefield , WV 24701

Gregg C. Sayre
Associate General Counsel – Eastern Region
180 South Clinton Avenue
Rochester, New York 14646

3. In response to paragraph 5, Citizens denies that it has violated the Telecommunications Act or any Tennessee statute in any respect.

4. In response to paragraph 6, Citizens denies that Citizens has provided no response to Universal. Universal apparently misplaced the name, address, telephone number and e-mail address of the Citizens employee, Mr. Larry Wetzel, who was Universal's primary contact in the 1999 negotiations leading up to the 1999 Interconnection agreement. To the best of Citizens' knowledge, Universal has sent Mr. Wetzel no written or electronic documents, has made no telephone calls to Mr. Wetzel and has not left Mr. Wetzel any voice mail messages. Citizens has no record of the February, 2001 letter attached to Universal's complaint, which appears to have been Universal's only attempt to raise the issue it is now bringing to the TRA. Moreover, as will be shown below, Citizens was not and is not required to renegotiate the terms and conditions of a voluntarily negotiated, signed and TRA-approved interconnection agreement during its effective period.

5. Paragraph 7 is a prayer for relief, which requires neither admission nor denial. As will be shown below, Universal has no valid ground for complaint against Citizens and the complaint should therefore be dismissed.

6. Citizens admits paragraphs 8-10 and admits that the TRA has jurisdiction over this matter, but Citizens denies the allegations of paragraphs 11-12 that the TRA's jurisdiction extends to the prescription of wholesale rates as requested by Universal. Citizens alleges that the TRA's jurisdiction in this matter extends to the resolution of disputes between the parties under the terms and conditions of the Resale Agreement. Citizens denies that the TRA has jurisdiction or authority to rewrite the Resale Agreement while it remains in effect, as Universal requests. The Commission's jurisdiction is to interpret and enforce a voluntarily negotiated interconnection agreement, not to change the bargain in mid-term.

7. In response to paragraphs 13-18, Citizens admits that Incumbent Local Exchange Carriers ("ILECs") have a number of duties with respect to Competitive Local Exchange Carriers ("CLECs"), but denies that the statutes cited by Universal give the TRA the jurisdiction or authority to overturn the terms and conditions of a duly negotiated, approved and effective interconnection agreement.

8. Citizens admits paragraph 19-20 except that Citizens denies that Universal's customers cannot access OS/DA services. Universal asked Citizens to block these services so that Universal's customers cannot use them, but Citizens is technically unable to block access to 411 and 555-1212 directory assistance calling by Universal's customers. As a compromise solution to this situation, Universal and Citizens have agreed that Citizens will manually adjust Citizens' bills to Universal so that Universal is not charged for these calls made by Universal's customers. Citizens therefore does not avoid any costs as a result of not providing DA services to Universal. In fact, Citizens incurs additional costs because Citizens not only continues to provide the services but also must manually adjust its bills to Universal to remove the charges for these services.

9. In response to paragraphs 21-22, Citizens agrees that OS/DA services are not addressed under the parties' Resale Agreement, but denies that the rate for such services should be determined by the TRA. Universal has not requested such services and as it states in paragraph 22 it does not wish to provide them or to obtain them from a third party such as Citizens. Universal has not agreed to pay any amount whatsoever for such services, and in fact has requested Citizens to block all such services. Citizens has agreed not to charge Universal for such services to the extent that Citizens is unable to block them. There is therefore no dispute between the parties with respect to the rate for such services and no reason for the TRA to prescribe a rate for a service that has never been requested and is still not being requested.

10. In response to paragraph 23, Citizens denies that Universal is being forced to pay for OS/DA services. In fact, Universal is receiving DA services for free. As stated above, Citizens also denies that Citizens does not incur a cost for the provision of DA services to Universal's customers.

11. In response to paragraph 24, Citizens is not required to renegotiate the Resale Agreement in mid-stream. Negotiations for a wholesale discount are appropriate and are required only during negotiations for an interconnection agreement. Once an interconnection agreement has been negotiated, filed and approved by the TRA, neither party has the right to demand a discount different from the discount, if any, established in the interconnection agreement, during the term of the agreement.

12. Citizens denies all remaining allegations of the complaint and all other allegations not specifically admitted by Citizens herein.

II. AFFIRMATIVE DEFENSE NO. 1

1. On February 16, 2000, the TRA approved the interconnection agreement attached to Universal's complaint, also referred to as the Resale Agreement, between Citizens and Universal.

2. The Resale Agreement remains in effect on a year-to-year basis, because neither party terminated it by giving notice of termination effective as of the end of the initial term on October 15, 2000 or as of the end of the first renewal term on October 15, 2001. At a minimum, the Resale Agreement will remain in effect until October 15, 2002.

3. The Telecommunications Act of 1996 contains a preference for voluntarily negotiated interconnection agreements pursuant to 47 U.S.C. §252(a). The standard for the wholesale discount that is relied upon by Universal appears in 47 U.S.C. §252(d)(3). This section applies only when a state commission must arbitrate the terms and conditions of an interconnection agreement pursuant to 47 U.S.C. §252(b) and (c). Where an agreed-upon interconnection agreement is submitted to the state commission, the standard is very different. Under §252(e)(2)(A) a negotiated agreement may be rejected only if it "discriminates against a telecommunications carrier not a party to the agreement" or if it "is not consistent with the public interest, convenience, and necessity." As stated explicitly in §252(e)(2)(B), the standards of §252(d) (including the wholesale discount pricing standard) come into play only when the state commission is considering whether to approve or reject an arbitrated agreement. It follows that fully negotiated agreements may contain prices that are different from the prices that would be established in an arbitrated agreement. Encouraging parties to negotiate their own mutually acceptable result, regardless of the standards for arbitration, is the whole purpose of requiring the parties to attempt to negotiate an agreement for 135 to 160 days before a petition for arbitration may be filed under §252(b)(1).

4. The Resale Agreement between Universal and Citizens is a negotiated interconnection agreement, not an arbitrated interconnection agreement. Its pricing terms and conditions are therefore not bound by the standards of §252(d), including the mechanism for establishing a discount based on avoided costs. The rates, terms and conditions of the agreement are subject only to the prohibition against discrimination against a non-party carrier and the public interest standard of §252(e)(2)(A). The TRA, in its February 16, 2000 Order Approving Resale Agreement, has already held that the Resale Agreement satisfies these standards. Universal therefore has no legal basis to insist that the Resale Agreement be rewritten to establish a wholesale discount percentage based on the standards applicable to arbitrated agreements.

5. The Resale Agreement between Universal and Citizens does not give Universal a wholesale discount. Universal could have negotiated for a discount but it did not. Universal could have demanded an arbitration, in which case the pricing standards of §252(d) would have applied, but it did not. Although Citizens cannot state what was in the mind of Universal's employees during the negotiations, it is apparent that the concessions made by Citizens throughout the agreement were sufficient for Universal to sign an agreement without a wholesale discount. Universal claims at paragraph 28 of its complaint that the lack of a wholesale discount causes its customers to pay inflated rates. If this were true, Universal should have taken a different position when it negotiated its agreement with Citizens. This situation is the result of Universal's own and completely voluntary agreement, not the result of any violation of the Telecommunications Act or Tennessee statutes by Citizens.

6. Universal does not have the right to demand that the TRA rewrite the Resale Agreement during its effective term in order to give Universal additional concessions for which it failed to negotiate. Universal's demand to increase the agreed upon discount from zero to 12% is no different from a demand by a CLEC to change an agreed upon discount from 12% to 30%,

or a demand by an ILEC to decrease an agreed upon discount from 30% to 12%, in the middle of the term of an approved agreement. Neither party has the right to reopen an approved and effective interconnection agreement such as the Resale Agreement and ask the TRA to unwind the bargain that was made by the parties and approved by the TRA.

III. AFFIRMATIVE DEFENSE NO. 2

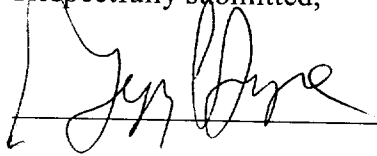
1. Even if it were open for Universal to demand that the TRA rewrite the Resale Agreement, Citizens is not avoiding costs in such a manner that would permit the establishment of a wholesale discount, even in an arbitrated case.

2. Universal asked Citizens to block operator and directory assistance services. However, because Citizens cannot technically block 411 and 555-1212 directory assistance calls made by Universal's customers, Citizens is actually providing these services and is incurring all of their normal costs.

3. Citizens' costs for directory assistance services provided to Universal's customers are larger than Citizens' costs of providing these services to its own retail customers, because Citizens must manually adjust Universal's bills to avoid charging Universal for these services. In addition, unlike Citizens' retail customers Universal's customers are receiving unlimited directory assistance service for free. These customers are therefore more likely to make large volumes of directory assistance calls, causing Citizens to incur more than normal levels of directory assistance costs on a per-line basis. There is therefore no basis for a wholesale discount based on avoided costs. Citizens is experiencing additional, not avoided, costs in this situation.

WHEREFORE, Citizens respectfully requests that Universal's complaint be dismissed in all respects.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Sayre", written over a horizontal line.

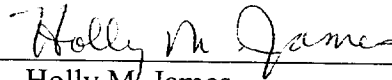
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DATE: October 17, 2001

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via first class United States mail, this 18th day of October, 2001 on:

Michael J. Blade
Dinsmore & Shohl LLP
Suite 1100
NationsBank Plaza
414 Union Street
Nashville, TN 37219
Counsel to Universal Telecom, Inc.



Holly M. James